

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )

**Comments of the New Mexico Attorney General in Support of the Petitions for  
Reconsideration by the Wyoming Public Service Commission, the Vermont Public  
Service Board, and the Alaska Public Utilities Commission**

The Attorney General of the State of New Mexico (Attorney General) respectfully submits comments in support of certain positions taken in the Petition for Reconsideration of the Wyoming Public Service Commission (WPSC), the Petition for Reconsideration and Clarification of the Vermont Public Service Board and the Vermont Department of Public Service (VPSB), and the Petition for Reconsideration and Request for Clarification of the Alaska Public Utilities Commission (APUC). The Attorney General represents the interests of residential ratepayers in the state of New Mexico.

The Attorney General expresses his strong support for the positions taken by WPSC, VPSB, and APUC that the Commission's order mandating that the federal Universal Service Fund (USF) support only 25% of a state's rural high-cost need will create seriously adverse consequences to states that are not densely populated and will violate both the spirit and the letter of the federal Telecommunications Act of 1996 (the Act). WPSC Petition at 2-4; VPSB Petition at 2-6; APUC Petition at 5-9. The Attorney General also agrees with VPSB that local exchange carriers should be required to use the

USF contributions to lower rates for basic local telephone service in high-cost areas rather than lowering the rates for other telephone services. VPSB Petition at 7-9

**I. Percentage of Federal USF Support for High-Cost Services Should Be Significantly Greater Than 25%**

According to Attachment A of the VPSB Petition, the New Mexico State Corporation Commission would have to impose a surcharge of approximately 26% (even more than what Vermont would have to impose) in order to make up for the USF revenue lost under the Commission's rule that provides for only 25% support for high-cost need from the USF. That would amount to a 26% rate increase for basic local exchange service throughout New Mexico on top of any increase that could potentially result from a successful attempt by a local exchange company to "rebalance" residential and business rates.

Such a consequence would be especially severe in New Mexico, which is one of the poorest states in the country and which has a significantly lower subscriber rate than the national average. This consequence would be totally contrary to the mandate of the Act to "preserve and advance universal service." Indeed, the Commission's order to allocate only 25% of the high-cost need to the federal USF would result in not only a failure to advance universal service, but also a failure to preserve universal service. If states without the resources to do so are charged with the greatest burden of ensuring the preservation and advancement of universal service, the movement toward universal service will take a giant step backwards. Furthermore, given the renewed vitality of the Tenth Amendment to the United States Constitution, see Printz v. United States, Supreme Court case No. 95-1503 (June 27, 1997), there is a decreasing likelihood that Congress or

the Commission will be able to require the states to ensure the preservation of universal service by subsidizing universal service with general state revenue.<sup>1</sup>

In addition to violating the Act, the Commission's mandate regarding the allocation of the high-cost need runs contrary to a policy statement in the Commission's Report and Order in this docket: that the Commission wants to "avoid action that directly or indirectly raises the price of the basic residential telephone service that guarantees access to the local exchange network." Report and Order, para. 16. Clearly, a significant rate increase in basic local telephone service would jeopardize the already-tenuous affordability of that service.

The Commission correctly observes that "in light of the significant disparity of income levels throughout the country, per-capita income of a local or regional area, and not a national median, should be considered in determining affordability." *Id.*, para. 115. Therefore, even if basic telephone service is generally affordable today, see id., para. 2, it may not be generally affordable in relatively poor, largely rural states such as New Mexico. Under a 25%-allocation regime, in comparison with the much greater federal USF allocation for many rural areas under the current regime, local basic telephone service will only become less affordable to many residential consumers. The Attorney General, therefore, agrees with WPSC, VPSB, and APUC that the mechanism established by the Commission to support universal service, even when taken together with possible state mechanisms (over which the Commission probably has no control), would provide

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<sup>1</sup> Printz stands for the principle that an unfunded federal mandate to state officials to implement a federal regulatory program is unconstitutional, unless the federal government is prepared to preempt the states' role and implement the program directly. *Id.*

insufficient support in violation of Section 254(b)(5) of the Act. See WPSC Petition at 2; VPBS Petition at 3; APUC Petition at 6, 8.

The Attorney General also agrees with WPSC that the Commission's new mandate for the federal USF violates Section 254(b)(3). See id. If, under the new regime, the rates in rural New Mexico for basic local exchange service remain "reasonably comparable to rates charged for similar services in urban areas" in New Mexico, Section 254(b)(3), as pointed out above, those rates will not be reasonably comparable to those charged in urban (or rural) areas in the more densely populated states. Because the comparability of rates is to apply to "[c]onsumers in all regions of the Nation", id. (emphasis added), and given the spirit of the Act and the spirit of Section 254 in particular, Congress could not have intended that the comparability of rates between rural and urban areas is to be achieved only within any given state.

As VPBS argues at page 4 of its Petition, even though the Commission has reserved the right to modify the 25% allocator, 25% "is simply not the right starting point." Therefore, the Attorney General supports the requests of WPSC, VPBS, and APUC that the Commission reconsider its Order with regard to this matter.

## **II. Federal USF Contributions Should Be Used for Lowering Rates for Basic Local Telephone Service in High-Cost Areas**


The Attorney General agrees with VPBS that the Commission should clarify that local exchange carriers, whether predominantly rural or not, are required to use the federal USF contributions to lower rates for basic local telephone service in high-cost areas rather than using those contributions to lower rates for other telephone services. See VPBS Petition at 8-9. If those carriers use the funding to lower, say, intraLATA

access charges rather than basic local exchange rates, it would further exacerbate the affordability problem outlined in Section I of these comments and thus further violate the Act's requirement to preserve and advance universal service. Long-distance service is clearly not intended to be supported by the federal USF at this time. Report and Order, paras. 56-87. As the funds in question are federal funds, the Commission can and should require them to be used to keep basic local exchange rates affordable.

WHEREFORE, the Attorney General of the State of New Mexico submits these comments for the Commission's consideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of the New Mexico Attorney General in Support of the Petitions for Reconsideration by the Wyoming Public Service Commission, the Vermont Public Service Board, and the Alaska Public Utilities Commission was mailed by first-class mail, postage prepaid, to each of the following individuals on this 14<sup>th</sup> day of August, 1997.

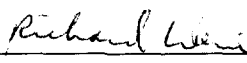
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